

# If D.C. expands rent control, impacted landlords could win huge tax breaks. That's alarming lawmakers.



D.C. Councilwoman Anita Bonds, center, is leading a review of a policy that could make it prohibitively expensive for the city to ever expand its rent control protections to additional buildings.

By Alex Koma – Staff Reporter, Washington Business Journal  
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"Certificates of assurance" might sound like dry legal documents, but they could generate windfalls for D.C. landlords or perhaps even handcuff lawmakers if they ever try to expand rent control protections in the city.

Its technical-sounding name aside, the principle behind these certificates is relatively simple: if D.C. expands its definition of which buildings fall under rent control, the owners of any affected properties can ask for a tax credit to offset that change. Specifically, they can pick up annual real estate tax rebates equal to the difference between the newly stabilized rent and whatever they'd be able to charge on the open market.

The District hasn't updated its rent control law in 35 years. It currently covers most apartments built before 1975 – about 75,000 units, or 36% of all units currently being rented, the D.C. Policy Center estimates. But as advocates have agitated for an expansion of rent control to confront the District's housing affordability crisis, suddenly certificates of assurance have become quite popular.

D.C. officials say they've received dozens of applications for the certificates in recent months, though no one is quite sure how they've attracted the industry's notice 35 years after they were created. The policy largely escaped attention after it was tucked into a broader rewrite of rent control laws, resurfacing now as talk of rent control reform gains steam.

That's alarmed lawmakers who fear the outsized effect these tax credits could have on the city's already-strained coffers, considering that any rent control expansion could make hundreds of buildings eligible for these tax breaks. The D.C. Council voted unanimously Tuesday to put a one-year moratorium on the issuance of these certificates, giving policymakers a chance to more closely review a policy that could have huge implications for development and housing in the city.

“We can't even entertain extending rent control to other units until we have clarity as to, what is this law?” Councilwoman Anita Bonds, D-At large, chair of the housing committee, said during a meeting Tuesday. “This could be a huge financial cost to the District.”

### **A lack of clarity?**

Part of the reason the council agreed to this moratorium, over the objections of Mayor Muriel Bowser, is because there are still so many unknowns about these certificates and how they'd even work in practice.

For starters, it remains unclear whether the city has ever awarded one. Polly Donaldson, the director of D.C.'s Department of Housing and Community Development, told Bonds' committee Sept. 14 that she couldn't find any records of certificates ever being handed out. Industry advocates testified in the same hearing that some might've been issued in the immediate aftermath of their creation in 1985.

And because the certificates are so rare, Donaldson said her agency has no process in place for reviewing them, and she's similarly “unclear about the source of funding” if the city actually had to hand out these tax credits.

Nevertheless, she said DHCD has seen 43 applications for the certificates over the past nine months, “likely sparked by the attention paid to rent control here in the District and around the country this past year.”

The council isn’t on the cusp of expanding rent control, but there certainly has been more debate around the issue recently due to the work of the activists behind the “Reclaim Rent Control” campaign.

Lawmakers recently agreed to a 10-year reauthorization of the rent control law, but changes are still possible – two council members are backing legislation that would embrace the “Reclaim Rent Control” platform, putting any apartment built since 2005 under rent control and ensuring that new buildings are included under these rent protections on a rolling basis. Bonds has not yet committed to advance that legislation, but she’s also proposed a variety of rent control reform measures herself that will soon receive hearings.

### **A 'poison pill' or source of stability?**

Advocates believe the issuance of certificates of assurance could make it virtually impossible for many of those rent control changes to ever become law. Beth Mellen Harrison, director of the housing law unit at the Legal Aid Society of D.C., said during the Sept. 14 hearing that the certificates are essentially a “poison pill” designed to kill any future expansion of rent control. She added that one provision of the law could be interpreted as allowing landlords with certificates to take the city to court to recover direct monetary relief, instead of just pursuing tax credits.

“It would cost tens of millions of dollars. It would break the budget,” Harrison said. “This is an undemocratic and fundamentally unfair provision. It ties the hands of this council and any future council.”

But Randi Marshall, vice president of government affairs at the Apartment and Office Building Association of Metropolitan Washington, countered that the policy actually has “given developers a sense of security that the regulatory landscape in the District will remain stable enough to support multimillion-dollar investments.” If these certificates were ever eliminated, she suspects there’d be a “chilling effect” on local development.

“It could mean that some developers need to downgrade the size, design and materials of a project in order to make the investment work,” Marshall said during the hearing. “Others could opt to cancel a project outright.”

That sort of argument does not generate much sympathy among some council members, however, who point to D.C.'s recent development boom as evidence that rent control has hardly deterred construction since its passage in the early 1970s. Councilwoman Elissa Silverman, I-At large, also noted during the hearing that "very little new housing was being built in the city" when these certificates were created in 1985.

"Contrast that to today," Silverman said. "You could hardly make the argument that rent control has slowed construction to virtually nothing."

### **What comes next?**

Silverman and Bonds both observed that lawmakers never held dedicated hearings on the certificates three decades ago, noting that the provision was slipped into a broader law without debate. That's why lawmakers are so keen on pressing pause on the process now to at least understand the policy in more detail, and decide whether or not it should be repealed.

"This ensures that what we will ultimately decide on in terms of expanding rent control will actually have teeth and does what we intend it to do," Councilwoman Brooke Pinto, D-Ward 2, said Tuesday.

It is still an open question whether the council will expand rent control and make these certificates a relevant factor. But there was undoubtedly some sentiment among lawmakers Tuesday for that sort of conversation.

"Some of the older buildings that have been covered are off the market," said Councilwoman Mary Cheh, D-Ward 3. "We really need to rethink whether that 1975 date makes sense anymore."